

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

JANE FENG,

Plaintiff and Appellant,

v.

DAVID YANG,

Defendant and Respondent.

A151161

(City & County of San Francisco
Super. Ct. No. CGC-16-555308)

Jane Feng, in propria persona, appeals from a judgment entered after the trial court sustained David Yang's (Yang) demurrer to Feng and her son Zhen Zhou's (Zhou) complaint without leave to amend.¹ Feng contends the trial court erred because her claim was not barred by the three-year statute of limitations. We reject her contention and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Prior Cases

This case has a long history that is detailed in our prior opinion, *Feng v. Yang* (Mar. 1, 2017, A144961) [nonpub. opn.], of which we take judicial notice (Evid. Code, § 451).² To summarize, Feng hired Yang, an attorney, to represent her and/or Zhou in three lawsuits between 2009 and 2010: (1) a personal injury action for injuries Zhou

¹ Zhou was a plaintiff below but is not a party to this appeal.

² Yang requested that we take judicial notice of our prior opinion.

sustained to his finger in Feng's rental apartment (Finger Injury Case); (2) a wrongful eviction action against Feng's former landlord (Wrongful Eviction Case); and (3) a personal injury action for injuries Feng and Zhou sustained in a car accident (Car Accident Case). The Wrongful Eviction Case settled in April 2010 and the Finger Injury Case settled in June 2010. Yang filed a lawsuit on behalf of Feng and Zhou in the Car Accident Case in January 2010 and represented them until July 2010, when he substituted out of the case due to health issues. That same month, Feng and Zhou retained a new attorney, Arthur Liu (Liu), to represent them in the Car Accident Case.

In August 2012, Feng and Zhou, in propria persona, filed an action against Yang, alleging he committed legal malpractice, negligent misrepresentation, and breach of fiduciary duty in his handling of the three lawsuits. They alleged Yang forced them to settle the Finger Injury Case and failed to seek certain damages in the Wrongful Eviction Case. They alleged Yang failed to depose the defendant-driver in the Car Accident Case and failed to advise Zhou that he did not have to answer certain questions during his deposition. Feng alleged she did not discover she was “ ‘misled and misrepresented’ ” until June 2012, when she reviewed documents Yang had given her at the end of his representation.

Yang moved for summary judgment on the ground that the undisputed evidence showed Feng and Zhou were aware of the facts constituting their claims in or before February 2011, more than one year before they filed the action. The trial court agreed and entered judgment in favor of Yang.

In October 2014, Feng and Zhou, in propria persona, filed a second action against Yang, alleging he committed fraud in connection with the three lawsuits. They alleged Yang sought to represent Zhou in the Finger Injury Case as “bait” so he could be retained in the Wrongful Eviction Case and share in the damages. Yang then failed to pursue certain claims in the Wrongful Eviction Case and did not “ ‘do anything’ ” for the Car Accident Case for months.

Yang demurred, and the trial court sustained the demurrer without leave to amend on the ground that the claim was barred by the three-year statute of limitations. Feng challenged the trial court's decision in appeal No. A144961, and we affirmed.

The Third Action

On July 8, 2016, while appeal No. A144961 was pending, Feng and Zhou filed a third action (the Third Action)—which is the subject of the instant appeal—against Yang. In the Third Action, they alleged Yang committed fraud in the Car Accident Case by providing “false information under the table” to the defendant-driver's insurance company, State Farm. They alleged they learned of this fraud long after Yang substituted out of the Car Accident Case.

Judicially noticed court filings showed that Feng and Zhou entered into a settlement agreement in the Car Accident Case shortly after Liu substituted in as their new attorney. On October 3, 2012, Feng filed an action against Liu and State Farm, alleging Liu and State Farm's attorney “conspired” to force her to sign the settlement agreement. Liu demurred to Feng's first amended complaint on April 16, 2013, on statute of limitations grounds. He submitted a declaration in which he stated, among other things, that the Car Accident Case was challenging because Feng and Zhou had “prior injuries and existing conditions,” the defendant-driver claimed that Zhou “abruptly and without warning stopped during a yellow light,” and it was a “low speed accident.” He declared he did his best in representing Feng, who willingly and knowingly signed the settlement agreement on August 16, 2010—well over a year before she filed her action against Liu and State Farm.

Feng and Zhou claimed in the Third Action against Yang that when they read the above statements Liu made in his demurrer papers, they realized for the first time that Yang had defrauded them by making the following three false statements, which weakened their case and caused them “great loss”: (1) that Feng and Zhou had “prior injuries and existing conditions”; (2) that the defendant-driver claimed Zhou “abruptly

and without warning stopped during a yellow light”; and (3) that it was a “low speed accident.” (Boldface omitted.)

Yang filed a demurrer to the Third Action on statute of limitations and other grounds. Feng and Zhou opposed the demurrer, claiming they did not discover Yang’s fraud until they had read Liu’s demurrer papers. They also claimed they did not fully understand the extent of Yang’s fraud until November 1, 2013, when they learned that Yang had prepared some legal papers in June 2010—the same month he had told them he had to withdraw from the Car Accident Case due to health issues. Feng and Zhou claimed that after seeing the legal papers, they realized Yang had not been too ill to work in June 2010, and that he had feigned illness in order to “abandon” their case before anyone could discover his fraud.

The trial court sustained Yang’s demurrer without leave to amend, stating: “The face of the complaint shows that the fraud claim is barred by the three-year statute of limitations of CCP 338(d). The fraud claim references statements . . . Liu made in demurrer papers that were filed in April 2013, more than three years before this case was filed. Moreover, the fraud claim could have been included in the prior lawsuits brought by plaintiffs against Mr. Yang and are therefore barred by the doctrine of res judicata.” Feng filed a timely notice of appeal.

DISCUSSION

On appeal from a judgment of the trial court dismissing an action after sustaining a demurrer without leave to amend, “ ‘[w]e treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.’ [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) We must affirm the judgment if any ground for the demurrer

is well taken. (*Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 320.)

The statute of limitations for fraud is three years. (Code Civ. Proc., § 338, subd. (d).) As noted, Feng alleged in the Third Action, filed July 8, 2013, that she first learned of Yang's fraudulent act of making three false statements when she read Liu's demurrer papers. Liu filed a demurrer to Feng's first amended complaint on April 16, 2013, and referenced the three statements in a declaration in support of the demurrer. He served Feng with these papers by mail on April 12, 2013. Feng does not deny receiving these papers at or around that time. Because Feng was aware, or should have been aware, of the facts constituting her fraud claim in April 2013, the trial court did not err in ruling that the Third Action, filed more than three years later, was barred by the statute of limitations.

Feng argues, as she did below, that she did not fully understand the extent of the fraud until November 1, 2013, when she realized that Yang had feigned illness in order to substitute out of the Car Accident Case before others could discover his fraud. The three-year statute of limitations period, however, commences when a plaintiff has notice of information or circumstances sufficient to put a reasonable person on inquiry notice, i.e., when "the plaintiff suspects or should suspect her injury was caused by wrongdoing" (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110.) The term "wrongdoing" does not mean a plaintiff must be aware of every fact necessary to establish the claim or that the facts constitute a legal cause of action. (*Id.* at p. 1111.) Rather, it is the suspicion of some "wrongdoing" that triggers the commencement of the three-year period. (*Ibid.*)

Here, the false information Yang allegedly provided to State Farm formed the basis of Feng's action for fraud. Although the fact that Yang may have also feigned illness in order to cover up the fraud could support Feng's claim, it is the suspicion of "wrongdoing"—not the discovery of additional facts to support the claim—that triggers

the limitations period. (*Jolly v. Eli Lilly & Co.*, *supra*, 44 Cal.3d at p. 1110.) Because Feng was aware of the key facts constituting the fraud in April 2013, the trial court did not err in determining that the Third Action, filed more than three years later, was barred by the statute of limitations.

Finally, we note that when a demurrer is sustained without leave to amend, “we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff.” (*Blank v. Kirwan*, *supra*, 39 Cal.3d at p. 318.) Feng does not set forth any facts or argument to show how she can amend the Third Action to state a valid cause of action. We conclude the trial court did not abuse its discretion in denying leave to amend.

DISPOSITION

The judgment is affirmed. Respondent David Yang shall recover his costs on appeal.

Jenkins, J.

WE CONCUR:

Siggins, P. J.

Petrou, J.